

2004 Draft Form Contract
and
Summaries of the 2003 Draft Contract Provisions

(**Table 1** General Summary and Comparison of Draft 2003 Contract Provisions and **Table 2** Elements Unique to Existing and Interim Contracts)

The Final Draft Contracts (June 2004) are available upon request at the Shasta Area Office of the U.S. Bureau of Reclamation 530/275-1554, or you may view the draft contracts at:
<http://www.usbr.gov/mp/cvpia/3404c/1004FOC>

R.O. FINAL 4/19-2004
R.O. FINAL 1/20-2004 Redline
R.O. FINAL 6/10-2003
R.O. Draft 5/19-2003
R. O. Draft 5/09-2003
R.O. Draft 11/01-2000
CVP-Wide Form 11-05
Contract No. _____ - LTR1

1 UNITED STATES
2 DEPARTMENT OF THE INTERIOR
3 BUREAU OF RECLAMATION
4 Central Valley Project, California

5 LONG-TERM RENEWAL CONTRACT BETWEEN THE UNITED STATES
6 AND

7 _____
8 PROVIDING FOR PROJECT WATER SERVICE
9 FROM _____ DIVISION

10 THIS CONTRACT, made this _____ day of _____, 2004, in
11 pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or
12 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844),
13 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,
14 July 2, 1956 (70 Stat. 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263),
15 October 27, 1986 (100 Stat. 3050), as amended, and Title XXXIV of the Act of October 30, 1992
16 (106 Stat. 4706), all collectively hereinafter referred to as Federal Reclamation law, between
17 THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, and
18 _____, hereinafter referred to as the Contractor, a public agency of
19 the State of California, duly organized, existing, and acting pursuant to the laws thereof;

20 WITNESSETH, That:

21 EXPLANATORY RECITALS

[1st] WHEREAS, the United States has constructed and is operating the Central Valley Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for flood control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and restoration, generation and distribution of electric energy, salinity control, navigation and other beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San Joaquin River and their tributaries; and

[2nd] WHEREAS, the United States constructed _____, hereinafter collectively referred to as the _____ [Division/Unit] facilities, which will be used in part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

[3rd] WHEREAS, the rights to Project Water were acquired by the United States pursuant to California law for operation of the Project; and

[4th] WHEREAS, the Contractor and the United States entered into Contract No. _____, as amended, which established terms for the delivery to the Contractor of Project Water from the _____ [Division/Unit] from _____ through _____ [For binding agreement contractors only: (hereinafter referred to as the "Existing Contract,"); and [Contractor specific issue as to "as amended"]

[5th] [FOR IRC'S] WHEREAS, the Contractor and the United States have pursuant to subsection 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim renewal contract(s) identified as Contract No(s)._____, the current of which is hereinafter referred to as the Existing Contract, which provided for the continued water service to the Contractor from _____ through _____; and

45 [5th] [For Binding Agreement Contractors] WHEREAS, the United States and the
46 Contractor have, pursuant to Subsection 3404(c)(3) of the Central Valley Project Improvement
47 Act (CVPIA)¹, subsequently entered into a binding agreement, identified as Binding Agreement
48 No. _____, which sets out the terms pursuant to which the Contractor agreed to renew
49 the Existing Contract before its expiration date after completion of a programmatic
50 environmental impact statement and other appropriate environmental documentation and
51 negotiation of a renewal contract, and which also sets out the consequences of a subsequent
52 decision not to renew; and

53 [6th] WHEREAS, Section 3404(c) of the CVPIA² provides for long-term renewal of
54 the Existing Contract following completion of appropriate environmental documentation,
55 including a programmatic environmental impact statement PEIS pursuant to the National
56 Environmental Policy Act (NEPA), analyzing the direct and indirect impacts and benefits of
57 implementing the CVPIA and the potential renewal of all existing contracts for Project Water;
58 and

59 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
60 environmental review necessary to provide for long-term renewal of the Existing Contract; and

61 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
62 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws
63 of the State of California, for water service from the Project; and

64 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all
65 of its obligations under the Existing Contract; and

¹ Contractor Specific Issue: citation of Sec. 3404(c)(3) in M&I only contracts.

² Contractor Specific Issue: citation of Sec. 3404(c) in M&I only contracts.

[10th] [CONTRACTOR SPECIFIC] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and beneficial use and/or has demonstrated projected future demand for water use such that the Contractor has the capability³ and expects to utilize fully for reasonable and beneficial use the quantity of Project Water to be made available to it pursuant to this Contract; and

[11th] WHEREAS, water obtained from the Project has been relied upon by urban and agricultural areas within California for more than 50 years, and is considered by the Contractor as an essential portion of its water supply; and

[12th] WHEREAS, the economies of regions within the Project, including the Contractor's, depend upon the continued availability of water, including water service from the Project; and

[13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships to pursue measures to improve water supply, water quality, and reliability of the Project for all Project purposes; and

[14th] WHEREAS, the mutual goals of the United States and the Contractor include: to provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of the Project as required by law; to guard reasonably against Project Water shortages; to achieve a reasonable balance among competing demands for use of Project Water; and to comply with all applicable environmental statutes, all consistent with the legal obligations

³ Contractor Specific issue - This recital may need to be modified for individual contractors who do not have the capability today to take Project Water but can demonstrate that they will have the capability to take Project Water prior to the delivery of water.

of the United States relative to the Project; and

[15th] WHEREAS, the parties intend by this Contract to develop a more cooperative relationship in order to achieve their mutual goals; and

[16th] WHEREAS, the United States and the Contractor are willing to enter into this Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed by the parties hereto as follows:

DEFINITIONS

1. When used herein unless otherwise distinctly expressed, or manifestly incompatible with the intent of the parties as expressed in this Contract, the term:

(a) “Calendar Year” shall mean the period January 1 through December 31, both dates inclusive;

(b) “Charges” shall mean the payments required by Federal Reclamation law in addition to the Rates and Tiered Pricing Component specified in this Contract as determined annually by the Contracting Officer pursuant to this Contract;

(c) “Condition of Shortage” shall mean a condition respecting the Project during any Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract Total;⁴

(d) “Contracting Officer” shall mean the Secretary of the Interior’s duly authorized representative acting pursuant to this Contract or applicable Federal Reclamation law or regulation;

(e) “Contract Total” shall mean the maximum amount of water to which the

⁴ May need to be modified for some divisions, including a definition of interruption of supply.

Contractor is entitled under subdivision (a) of Article 3 of this Contract;

(f) “Contractor's Service Area” shall mean the area to which the Contractor is permitted to provide Project Water under this Contract as described in Exhibit “A” attached hereto, which may be modified from time to time in accordance with Article 35 of this Contract without amendment of this Contract;⁵

(g) “CVPIA” shall mean the Central Valley Project Improvement Act, Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

(h) “Eligible Lands” shall mean all lands to which Irrigation Water may be delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

(i) “Excess Lands” shall mean all lands in excess of the limitations contained in Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal Reclamation law;

(j) “Full Cost Rate” shall mean an annual rate as determined by the Contracting Officer that shall amortize the expenditures for construction properly allocable to the Project irrigation or M&I functions, as appropriate, of facilities in service including all O&M deficits funded, less payments, over such periods as may be required under Federal Reclamation law, or applicable contract provisions. Interest will accrue on both the construction expenditures and funded O&M deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982, and shall be calculated in accordance with subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes

⁵ Some Contractors may propose alternate language. Some Contractors may use a legal description, others may use a map.

actual operation, maintenance, and replacement costs consistent with Section 426.2 of the Rules and Regulations for the RRA;

(k) “Ineligible Lands” shall mean all lands to which Irrigation Water may not be delivered in accordance with Section 204 of the RRA;

(l) “Irrigation Full Cost Water Rate” shall mean the Full Cost Rate applicable to the delivery of Irrigation Water;

(m) “Irrigation Water” shall mean water made available from the Project that is used primarily in the production of agricultural crops or livestock, including domestic use incidental thereto, and watering of livestock;

(n) “Landholder” shall mean a party that directly or indirectly owns or leases nonexempt land, as provided in 43 CFR 426.2;

(o) “Municipal and Industrial (M&I) Water”⁷ shall mean Project Water, other than Irrigation Water, made available to the Contractor. M&I Water shall include water used for human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses) which are kept for personal enjoyment or water delivered to land holdings operated in units of less than five acres unless the Contractor establishes to the satisfaction of the Contracting Officer that the use of water delivered to any such landholding is a use described in subdivision (m) of this Article;

(p) “M&I Full Cost Water Rate” shall mean the Full Cost Rate applicable to the delivery of M&I Water;

⁷ Some Contractors may want to include “other water” definition in lieu of this definition. Individual Contractors with unique circumstances may negotiate a lower threshold.

(q) “Operation and Maintenance” or “O&M” shall mean normal and reasonable care, control, operation, repair, replacement (other than capital replacement), and maintenance of Project facilities;

(r) “Operating Non-Federal Entity” shall mean the _____, its successors or assigns, a non-Federal entity which has the obligation to operate and maintain all or a portion of the _____ [Division/Unit] facilities pursuant to an agreement with the United States, and which may have funding obligations with respect thereto;

(s) “Project” shall mean the Central Valley Project owned by the United States and managed by the Department of the Interior, Bureau of Reclamation;

(t) “Project Contractors” shall mean all parties who have water service contracts for Project Water from the Project with the United States pursuant to Federal Reclamation law;

(u) “Project Water” shall mean all water that is developed, diverted, stored, or delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance with the terms and conditions of water rights acquired pursuant to California law;

(v) “Rates” shall mean the payments determined annually by the Contracting Officer in accordance with the then-current applicable water ratesetting policies for the Project, as described in subdivision (a) of Article 7 of this Contract;

(w) “Recent Historic Average” shall mean the most recent five-year average of the final forecast of Water Made Available to the Contractor pursuant to this Contract or its preceding contract(s);

(x) “Secretary” shall mean the Secretary of the Interior, a duly appointed successor, or an authorized representative acting pursuant to any authority of the Secretary and

through any agency of the Department of the Interior;

(y) "Tiered Pricing Component" shall be the incremental amount to be paid for each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

(z) "Water Delivered" or "Delivered Water" shall mean Project Water diverted for use by the Contractor at the point(s) of delivery approved by the Contracting Officer⁸;

(aa) "Water Made Available" shall mean the estimated amount of Project Water that can be delivered to the Contractor for the upcoming Year as declared by the Contracting Officer, pursuant to subdivision (a) of Article 4 of this Contract;

(bb) "Water Scheduled" shall mean Project Water made available to the Contractor for which times and quantities for delivery have been established by the Contractor and Contracting Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

(cc) "Year" shall mean the period from and including March 1 of each Calendar Year through the last day of February of the following Calendar Year.

TERM OF CONTRACT

2. (a) This Contract shall be effective March 1, 200_, through February 28, 20__, and supercedes the Existing Contract.⁹ In the event the Contractor wishes to renew this Contract beyond February 28, 20__, the Contractor shall submit a request for renewal in writing to the Contracting Officer no later than two years prior to the date this Contract expires. The renewal of this Contract insofar as it pertains to the furnishing of Irrigation Water to the

⁸ This language may be modified at the Contractor level.

⁹ Contractor specific-may need to include language regarding this contract superceding Existing Contract, in whole or in part.

Contractor shall be governed by subdivision (b) of this Article, and the renewal of this Contract insofar as it pertains to the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this Article.

(b) (1) Under terms and conditions of a renewal contract that are mutually agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the time of contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and subject to Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to the Contractor, shall be renewed for a period of 25 years.

(2) The conditions which must be met for this Contract to be renewed are: (i) the Contractor has prepared a water conservation plan that has been determined by the Contracting Officer in accordance with Article 26 of this Contract to meet the conservation and efficiency criteria for evaluating such plans established under Federal law; (ii) the Contractor is implementing an effective water conservation and efficiency program based on the Contractor's water conservation plan as required by Article 26 of this Contract; (iii) the Contractor is maintaining all water measuring devices and implementing all water measurement methods as approved by the Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has reasonably and beneficially used the Project Water supplies made available to it and, based on projected demands, is reasonably anticipated and expects to fully utilize for reasonable and beneficial use the quantity of Project Water to be made available to it pursuant to such renewal; (v) the Contractor is complying with all terms and conditions of this Contract; and (vi) the Contractor has the physical and legal ability to deliver Project Water.

(3) The terms and conditions of the renewal contract described in subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed

215 consistent with the parties' respective legal rights and obligations, and in consideration of all
216 relevant facts and circumstances, as those circumstances exist at the time of renewal, including,
217 without limitation, the Contractor's need for continued delivery of Project Water; environmental
218 conditions affected by implementation of the Contract to be renewed, and specifically changes in
219 those conditions that occurred during the life of the Contract to be renewed; the Secretary's
220 progress toward achieving the purposes of the CVPIA as set out in Section 3402 and in
221 implementing the specific provisions of the CVPIA; and current and anticipated economic
222 circumstances of the region served by the Contractor.

223 (c) This Contract, insofar as it pertains to the furnishing of M&I Water to the
224 Contractor, shall be renewed for successive periods of up to 40 years each, which periods shall
225 be consistent with then-existing Reclamation-wide policy, under terms and conditions mutually
226 agreeable to the parties and consistent with Federal and State law. The Contractor shall be
227 afforded the opportunity to comment to the Contracting Officer on the proposed adoption and
228 application of any revised policy applicable to the delivery of M&I Water that would limit the
229 term of any subsequent renewal contract with the Contractor for the furnishing of M&I Water to
230 less than 40 years.

231 (d) The Contracting Officer shall make a determination ten years after the
232 date of execution of this Contract, and every five years thereafter during the term of this
233 Contract, of whether a conversion of the relevant portion of this Contract to a contract under
234 subsection 9(d) of the Reclamation Project Act of 1939 can be accomplished pursuant to the Act
235 of July 2, 1956 (70 Stat 483). The Contracting Officer shall also make a determination ten years
236 after the date of execution of this Contract and every five years thereafter during the term of this
237 Contract of whether a conversion of the relevant portion of this Contract to a contract under

subsection 9(c)(1) of the Reclamation Project Act of 1939 can be accomplished.

Notwithstanding any provision of this Contract, the Contractor reserves and shall have all rights and benefits under the Act of July 2, 1956 (70 Stat. 483). The Contracting Officer anticipates that during the term of this Contract, all authorized Project construction expected to occur will have occurred, and on that basis the Contracting Officer agrees upon such completion to allocate all costs that are properly assignable to the Contractor, and agrees further that, at any time after such allocation is made, and subject to satisfaction of the condition set out in this subdivision, this Contract shall, at the request of the Contractor, be converted to a contract under subsection 9(d) or 9(c)(1), whichever is applicable, of the Reclamation Project Act of 1939, subject to applicable Federal law and under stated terms and conditions mutually agreeable to the Contractor and the Contracting Officer. A condition for such conversion to occur shall be a determination by the Contracting Officer that, account being taken of the amount credited to return by the Contractor as provided for under Federal Reclamation law, the remaining amount of construction costs assignable for ultimate return by the Contractor can probably be repaid to the United States within the term of a contract under subsection 9(d) or 9(c)(1), whichever is applicable. If the remaining amount of costs that are properly assignable to the Contractor cannot be determined during the term of this Contract, the Contracting Officer shall notify the Contractor, and provide the reason(s) why such a determination could not be made. Further, the Contracting Officer shall make such a determination as soon thereafter as possible so as to permit, upon request of the Contractor and satisfaction of the condition set out above, conversion to a contract under subsection 9(d) or 9(c)(1), whichever is applicable. In the event such determination of costs has not been made at a time which allows conversion of this Contract during the term of this Contract or the Contractor has not requested conversion of this Contract within such term, the

parties shall incorporate in any subsequent renewal contract as described in subdivision (b) of this Article a provision that carries forth in substantially identical terms the provisions of this subdivision.

WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

3. (Divisional) (a) During each Year, consistent with all applicable State water rights, permits, and licenses, Federal law, and subject to the provisions set forth in Articles 11 and 12 of this Contract, the Contracting Officer shall make available for delivery to the Contractor _____ acre-feet of Project Water for irrigation and M&I purposes. Water Delivered to the Contractor in accordance with this subdivision shall be scheduled and paid for pursuant to the provisions of Articles 4 and 7 of this Contract.

(b) Because the capacity of the Project to deliver Project Water has been constrained in recent years and may be constrained in the future due to many factors including hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor actually receiving the amount of Project Water set out in subdivision (a) of this Article in any given Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected that the Contract Total set forth in this Contract will not be available to the Contractor in many years. During the most recent five years, the Recent Historic Average of water made available to the Contractor was _____ acre-feet. Nothing in subdivision (b) of this Article shall affect the rights and obligations of the parties under any provision of this Contract.

(c) The Contractor shall utilize the Project Water in accordance with all applicable legal requirements.

(d) The Contractor shall make reasonable and beneficial use of all water

furnished pursuant to this Contract. Groundwater recharge programs (direct, indirect, or in lieu), groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted within the Contractor's Service Area which are consistent with applicable State law and result in use consistent with Federal Reclamation law will be allowed; Provided, That any direct recharge program(s) is (are) described in the Contractor's water conservation plan submitted pursuant to Article 26 of this Contract; Provided, further, That such water conservation plan demonstrates sufficient lawful uses exist in the Contractor's Service Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be reasonable for such uses and in compliance with Federal Reclamation law. Groundwater recharge programs, groundwater banking programs, surface water storage programs, and other similar programs utilizing Project Water or other water furnished pursuant to this Contract conducted outside the Contractor's Service Area may be permitted upon written approval of the Contracting Officer, which approval will be based upon environmental documentation, Project Water rights, and Project operational concerns. The Contracting Officer will address such concerns in regulations, policies, or guidelines.

(e) The Contractor shall comply with requirements applicable to the Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are within the Contractor's legal authority to implement. The Existing Contract, which evidences in excess of ___years of diversions for irrigation and/or M&I purposes¹¹ of the quantities of water provided in subdivision (a) of Article 3 of this Contract, will be considered in

¹¹ **Specific Contract Issue:** The type of water diverted will be addressed on a contractor specific basis.

305 developing an appropriate baseline for biological assessment(s) prepared pursuant to the ESA,
306 and any other needed environmental review. Nothing herein shall be construed to prevent the
307 Contractor from challenging or seeking judicial relief in a court of competent jurisdiction with
308 respect to any biological opinion or other environmental documentation referred to in this
309 Article.¹²

310 (f) Following the declaration of Water Made Available under Article 4 of this
311 Contract, the Contracting Officer will make a determination whether Project Water, or other
312 water available to the Project, can be made available to the Contractor in addition to the Contract
313 Total under Article 3 of this Contract during the Year without adversely impacting other Project
314 Contractors. At the request of the Contractor, the Contracting Officer will consult with the
315 Contractor prior to making such a determination. If the Contracting Officer determines that
316 Project Water, or other water available to the Project, can be made available to the Contractor,
317 the Contracting Officer will announce the availability of such water and shall so notify the
318 Contractor as soon as practical. The Contracting Officer will thereafter meet with the Contractor
319 and other Project Contractors capable of taking such water to determine the most equitable and
320 efficient allocation of such water. If the Contractor requests the delivery of any quantity of such
321 water, the Contracting Officer shall make such water available to the Contractor in accordance
322 with applicable statutes, regulations, guidelines, and policies.

323 [DIVISIONAL ISSUE-SECTION 215 WATER]

324 (g) The Contractor may request permission to reschedule for use during the
325 subsequent Year some or all of the Water Made Available to the Contractor during the current

¹² **Specific Contract Issue:** As an example, the concern over land use authority may be the subject of discussion with individual contractors.

Year, referred to as “carryover.”¹³ The Contractor may request permission to use during the current Year a quantity of Project Water which may be made available by the United States to the Contractor during the subsequent Year, referred to as “preuse.” The Contracting Officer’s written approval may permit such uses in accordance with applicable statutes, regulations, guidelines, and policies.

(h) The Contractor’s right pursuant to Federal Reclamation law and applicable State law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the term thereof and any subsequent renewal contracts, as described in Article 2 of this Contract, during the terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its obligations under this Contract and any renewals thereof. Nothing in the preceding sentence shall affect the Contracting Officer’s ability to impose shortages under Article 11 or subdivision (b) of Article 12 of this Contract or applicable provisions of any subsequent renewal contracts.

(i) Project Water furnished to the Contractor pursuant to this Contract may be delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this Contract upon written approval by the Contracting Officer in accordance with the terms and conditions of such approval.

(j) The Contracting Officer shall make reasonable efforts to protect the water rights necessary for the Project and to provide the water available under this Contract. The Contracting Officer shall not object to participation by the Contractor, in the capacity and to the extent permitted by law, in administrative proceedings related to the Project Water rights; Provided, That the Contracting Officer retains the right to object to the substance of the

¹³ “Rescheduled” in some divisions.

Contractor's position in such a proceeding; Provided further, That in such proceedings the Contracting Officer shall recognize the Contractor has a legal right under the terms of this Contract to use Project Water.

TIME FOR DELIVERY OF WATER

4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall announce the Contracting Officer's expected declaration of the Water Made Available. Such declaration will be expressed in terms of both Water Made Available and the Recent Historic Average and will be updated monthly, and more frequently if necessary, based on then-current operational and hydrologic conditions and a new declaration with changes, if any, to the Water Made Available will be made. The Contracting Officer shall provide forecasts of Project operations and the basis of the estimate, with relevant supporting information, upon the written request of the Contractor. Concurrently with the declaration of the Water Made Available, the Contracting Officer shall provide the Contractor with the updated Recent Historic Average.

(b) On or before each March 1 and at such other times as necessary, the Contractor shall submit to the Contracting Officer a written schedule, satisfactory to the Contracting Officer, showing the monthly quantities of Project Water to be delivered by the United States to the Contractor pursuant to this Contract for the Year commencing on such March 1. The Contracting Officer shall use all reasonable means to deliver Project Water according to the approved schedule for the Year commencing on such March 1.

(c) The Contractor shall not schedule Project Water in excess of the quantity of Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor's Service Area or to sell, transfer, or exchange pursuant to Article 9 of this Contract during any Year.

(d) Subject to the conditions set forth in subdivision (a) of Article 3 of this Contract, the United States shall deliver Project Water to the Contractor in accordance with the initial schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable time prior to the date(s) on which the requested change(s) is/are to be implemented.

POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this Contract shall be delivered to the Contractor at _____ and any additional point or points of delivery either on Project facilities or another location or locations mutually agreed to in writing by the Contracting Officer and the Contractor.

(b) The Contracting Officer, either directly or through its written agreement(s) with the Operating Non-Federal Entity/Entities [Contractor specific issue-reference to Entities] shall make all reasonable efforts to maintain sufficient flows and levels of water in Project facilities to deliver Project Water to the Contractor at specific turnouts established pursuant to subdivision (a) of this Article.

(c) The Contractor shall deliver Irrigation Water in accordance with any applicable land classification provisions of Federal Reclamation law and the associated regulations. The Contractor shall not deliver Project Water to land outside the Contractor's Service Area unless approved in advance by the Contracting Officer.

(d) All Water Delivered to the Contractor pursuant to this Contract shall be measured and recorded with equipment furnished, installed, operated, and maintained by the United States, or the Operating Non-Federal Entity/Entities ¹⁴ at the point or points of delivery

established pursuant to subdivision (a) of this Article. Upon the request of either party to this Contract, the Contracting Officer shall investigate, or cause to be investigated by the appropriate Operating Non-Federal Entity/Entities, the accuracy of such measurements and shall take any necessary steps to adjust any errors appearing therein. For any period of time when accurate measurements have not been made, the Contracting Officer shall consult with the Contractor and the appropriate Operating Non-Federal Entity/Entities prior to making a final determination of the quantity delivered for that period of time.

(e) Neither the Contracting Officer nor any Operating Non-Federal Entity/Entities shall be responsible for the control, carriage, handling, use, disposal, or distribution of Water Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in subdivision (a) of this Article. The Contractor shall indemnify the United States, its officers, employees, agents, and assigns on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such Water Delivered beyond such delivery points, except for any damage or claim arising out of (i) acts or omissions of the Contracting Officer or any of its officers, employees, agents, or assigns, including the Operating Non-Federal Entity/Entities, with the intent of creating the situation resulting in any damage or claim, (ii) willful misconduct of the Contracting Officer or any of its officers, employees, agents, or assigns, including the Operating Non-Federal Entity/Entities, (iii) negligence of the Contracting Officer or any of its officers, employees, agents, or assigns including the Operating Non-Federal Entity/Entities, or (iv) damage or claims resulting from a malfunction of facilities owned and/or operated by the United States or the Operating Non-Federal Entity/Entities

416 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA¹⁵

417 6. (Contractor Specific)(a) The Contractor has established a measuring program
418 satisfactory to the Contracting Officer. The Contractor shall ensure that all surface water
419 delivered for irrigation purposes within the Contractor's Service Area is measured at each
420 agricultural turnout and such water delivered for M&I purposes is measured at each M&I service
421 connection. The water measuring devices or water measuring methods of comparable
422 effectiveness must be acceptable to the Contracting Officer. The Contractor shall be responsible
423 for installing, operating, and maintaining and repairing all such measuring devices and
424 implementing all such water measuring methods at no cost to the United States. The Contractor
425 shall use the information obtained from such water measuring devices or water measuring
426 methods to ensure its proper management of the water, to bill water users for water delivered by
427 the Contractor; and, if applicable, to record water delivered for M&I purposes by customer class
428 as defined in the Contractor's water conservation plan provided for in Article 26 of this Contract.
429 Nothing herein contained, however, shall preclude the Contractor from establishing and
430 collecting any charges, assessments, or other revenues authorized by California law. The
431 Contractor shall include a summary of all its annual surface water deliveries in the annual report
432 described in subdivision (c) of Article 26.

433 (b) (Contractor Specific) To the extent the information has not otherwise
434 been provided, upon execution of this Contract, the Contractor shall provide to the Contracting
435 Officer a written report describing the measurement devices or water measuring methods being
436 used or to be used to implement subdivision (a) of this Article and identifying the agricultural
437 turnouts and the M&I service connections or alternative measurement programs approved by the

¹⁵ Recognize unique circumstances at Contractor level may require negotiation of different language.

Contracting Officer, at which such measurement devices or water measuring methods are being used, and, if applicable, identifying the locations at which such devices and/or methods are not yet being used including a time schedule for implementation at such locations. The Contracting Officer shall advise the Contractor in writing within 60 days as to the adequacy and necessary modifications, if any, of the measuring devices or water measuring methods identified in the Contractor's report and if the Contracting Officer does not respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the Contractor that the measuring devices or methods are inadequate, the parties shall within 60 days following the Contracting Officer's response, negotiate in good faith the earliest practicable date by which the Contractor shall modify said measuring devices and/or measuring methods as required by the Contracting Officer to ensure compliance with subdivision (a) of this Article.

(c) All new surface water delivery systems installed within the Contractor's Service Area after the effective date of this Contract shall also¹⁶ comply with the measurement provisions described in subdivision (a) of this Article.

(d) (Contractor Specific) The Contractor shall inform the Contracting Officer and the State of California in writing by April 30 of each Year of the monthly volume of surface water delivered within the Contractor's Service Area during the previous Year.

(e) (Contractor Specific) The Contractor shall inform the Contracting Officer and the Operating Non-Federal Entity on or before the 20th calendar day of each month of the quantity of Irrigation and M&I Water taken during the preceding month.

RATES AND METHOD OF PAYMENT FOR WATER

7. (a) The Contractor shall pay the United States as provided in this Article for

¹⁶ Some Contractors may propose alternate date.

all Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance with (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's then-existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended, modified, or superceded only through a public notice and comment procedure; (ii) applicable Federal Reclamation law and associated rules and regulations, or policies; and (iii) other applicable provisions of this Contract. Payments shall be made by cash transaction, electronic funds transfer, or any other mechanism as may be agreed to in writing by the Contractor and the Contracting Officer. The Rates, Charges, and Tiered Pricing Component applicable to the Contractor upon execution of this Contract are set forth in Exhibit "B," as may be revised annually.

(b) The Contracting Officer shall notify the Contractor of the Rates, Charges, and Tiered Pricing Component as follows:

(1) Prior to July 1 of each Calendar Year, the Contracting Officer shall provide the Contractor an estimate of the Charges for Project Water that will be applied to the period October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and the basis for such estimate. The Contractor shall be allowed not less than two months to review and comment on such estimates. On or before September 15 of each Calendar Year, the Contracting Officer shall notify the Contractor in writing of the Charges to be in effect during the period October 1 of the current Calendar Year, through September 30, of the following Calendar Year, and such notification shall revise Exhibit "B."

(2) Prior to October 1 of each Calendar Year, the Contracting Officer shall make available to the Contractor an estimate of the Rates and Tiered Pricing Component for Project Water for the following Year and the computations and cost allocations upon which

those Rates are based. The Contractor shall be allowed not less than two months to review and comment on such computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer shall provide the Contractor with the final Rates and Tiered Pricing Component to be in effect for the upcoming Year, and such notification shall revise Exhibit "B."

(c) At the time the Contractor submits the initial schedule for the delivery of Project Water for each Year pursuant to subdivision (b) of Article 4 of this Contract, the Contractor shall make an advance payment to the United States equal to the total amount payable pursuant to the applicable Rate(s) set under subdivision (a) of this Article, for the Project Water scheduled to be delivered pursuant to this Contract during the first two calendar months of the Year. Before the end of the first month and before the end of each calendar month thereafter, the Contractor shall make an advance payment to the United States, at the Rate(s) set under subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to this Contract during the second month immediately following. Adjustments between advance payments for Water Scheduled and payments at Rates due for Water Delivered shall be made before the end of the following month; Provided, That any revised schedule submitted by the Contractor pursuant to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this Contract during any month shall be accompanied with appropriate advance payment, at the Rates then in effect, to assure that Project Water is not delivered to the Contractor in advance of such payment. In any month in which the quantity of Water Delivered to the Contractor pursuant to this Contract equals the quantity of Water Scheduled and paid for by the Contractor, no additional Project Water shall be delivered to the Contractor unless and until an advance payment at the Rates then in effect for such additional Project Water is made. Final adjustment between the advance payments for the Water Scheduled and payments for the quantities of Water

Delivered during each Year pursuant to this Contract shall be made as soon as practicable, but no later than April 30th of the following Year, or 60 days after the delivery of Project Water carried over under subdivision (g) of Article 3 of this Contract if such water is not delivered by the last day of February.

(d) The Contractor shall also make a payment in addition to the Rate(s) in subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the appropriate Tiered Pricing Component then in effect, before the end of the month following the month of delivery; Provided, That the Contractor may be granted an exception from the Tiered Pricing Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent with the quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery report for the subject month prepared by the Operating Non-Federal Entity/Entities or, if there is no Operating Non-Federal Entity/Entities, by the Contracting Officer. The water delivery report shall be deemed a bill for the payment of Charges and the applicable Tiered Pricing Component for Water Delivered. Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of payments due to the United States for Charges for the next month. Any amount to be paid for past due payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20 of this Contract.

(e) The Contractor shall pay for any Water Delivered under subdivision (a), (f), or (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies; Provided, That the Rate for Water Delivered under subdivision (f) of Article 3 of this Contract shall be no more than the otherwise applicable Rate for Irrigation Water or M&I Water under subdivision (a) of this Article.

(f) Payments to be made by the Contractor to the United States under this Contract may be paid from any revenues available to the Contractor.

(g) All revenues received by the United States from the Contractor relating to the delivery of Project Water or the delivery of non-Project water through Project facilities shall be allocated and applied in accordance with Federal Reclamation law and the associated rules or regulations, and the then-current Project ratesetting policies for M&I Water or Irrigation Water.

(h) The Contracting Officer shall keep its accounts pertaining to the administration of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal standards, so as to reflect the application of Project costs and revenues. The Contracting Officer shall, each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all Project and Contractor expense allocations, the disposition of all Project and Contractor revenues, and a summary of all water delivery information. The Contracting Officer and the Contractor shall enter into good faith negotiations to resolve any discrepancies or disputes relating to accountings, reports, or information.

(i) The parties acknowledge and agree that the efficient administration of this Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms, policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Components, and/or for making and allocating payments, other than those set forth in this Article may be in the mutual best interest of the parties, it is expressly agreed that the parties may enter into agreements to modify the mechanisms, policies, and procedures for any of those purposes while this Contract is in effect without amending this Contract.

(j) (1) Beginning at such time as deliveries of Project Water in a Year exceed 80 percent of the Contract Total, then before the end of the month following the month of

552 delivery the Contractor shall make an additional payment to the United States equal to the
553 applicable Tiered Pricing Component. The Tiered Pricing Component for the amount of Water
554 Delivered in excess of 80 percent of the Contract Total, but less than or equal to 90 percent of the
555 Contract Total, shall equal one-half of the difference between the Rate established under
556 subdivision (a) of this Article and the Irrigation Full Cost Water Rate or M&I Full Cost Water
557 Rate, whichever is applicable. The Tiered Pricing Component for the amount of Water
558 Delivered which exceeds 90 percent of the Contract Total shall equal the difference between (i)
559 the Rate established under subdivision (a) of this Article and (ii) the Irrigation Full Cost Water
560 Rate or M&I Full Cost Water Rate, whichever is applicable. For all Water Delivered pursuant to
561 subdivision (a) of Article 3 of this Contract which is in excess of 80 percent of the Contract
562 Total, this increment shall be deemed to be divided between Irrigation Water and M&I Water in
563 the same proportion as actual deliveries of each bear to the cumulative total Water Delivered.¹⁷

564 (2) Subject to the Contracting Officer's written approval, the
565 Contractor may request and receive an exemption from such Tiered Pricing Components for
566 Project Water delivered to produce a crop which the Contracting Officer determines will provide
567 significant and quantifiable habitat values for waterfowl in fields where the water is used and the
568 crops are produced; Provided, That the exemption from the Tiered Pricing Component for
569 Irrigation Water shall apply only if such habitat values can be assured consistent with the
570 purposes of the CVPIA through binding agreements executed with or approved by the
571 Contracting Officer prior to use of such water.

572 (3) For purposes of determining the applicability of the Tiered Pricing
573 Component pursuant to this Article, Water Delivered shall include Project Water that the

¹⁷ Deletion of the last sentence or alternate language may be negotiated by individual districts.

Contractor transfers to others but shall not include Project Water transferred to the Contractor, nor shall it include the additional water provided to the Contractor under the provisions of subdivision (f) of Article 3 of this Contract.¹⁸

(k) For the term of this Contract, Rates under the respective ratesetting policies will be established to recover only reimbursable O&M (including any deficits) and capital costs of the Project, as those terms are used in the then-current Project ratesetting policies, and interest, where appropriate, except in instances where a minimum Rate is applicable in accordance with the relevant Project ratesetting policy. Changes of significance in practices which implement the Contracting Officer's ratesetting policies will not be implemented until the Contracting Officer has provided the Contractor an opportunity to discuss the nature, need, and impact of the proposed change.

(l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA, the Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted upward or downward to reflect the changed costs, if any, incurred by the Contracting Officer in the delivery of the transferred Project Water to the transferee's point of delivery in accordance with the then applicable Project ratesetting policy. If the Contractor is receiving lower Rates and Charges because of inability to pay and is transferring Project Water to another entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and Charges for transferred Project Water shall be the Contractor's Rates and Charges and will not be adjusted to reflect the Contractor's inability to pay.

(m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting Officer is authorized to adjust determinations of ability to pay every five years.

¹⁸ **Divisions/Districts may propose alternative language.**

(n) [For contractors with M&I water]: With respect to the Rates for M&I Water the Contractor asserts that it is not legally obligated to pay any Project deficits claimed by the United States to have accrued as of the date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the Contractor does not waive any legal rights or remedies that it may have with respect to such disputed issues. Notwithstanding the execution of this Contract and payments made hereunder, the Contractor may challenge in the appropriate administrative or judicial forums: (1) the existence, computation, or imposition of any deficit charges accruing during the term of the Existing Contract and any preceding interim renewal contracts, if applicable; (2) interest accruing on any such deficits; (3) the inclusion of any such deficit charges or interest in the Rates; (4) the application by the United States of payments made by the Contractor under its Existing Contract and any preceding interim renewal contracts, if applicable; and (5) the application of such payments in the Rates. The Contracting Officer agrees that the Contractor shall be entitled to the benefit of any administrative or judicial ruling in favor of any Project M&I contractor on any of these issues, and credits for payments heretofore made, Provided, That the basis for such ruling is applicable to the Contractor.¹⁹

NON-INTEREST BEARING OPERATION AND MAINTENANCE DEFICITS²⁰

8. The Contractor and the Contracting Officer concur that, as of the effective date of this Contract, the Contractor has no non-interest-bearing O&M deficits and shall have no further liability therefor.

[Or,]

The Contractor and the Contracting Officer have entered into a written agreement

¹⁹ Contractors may opt-out of including this subarticle in the contract.

²⁰ Contractor Specific

specifying a mutually acceptable mechanism through which the Contractor will retire its
outstanding non-interest-bearing OO&M deficits.

SALES, TRANSFERS, OR EXCHANGES OF WATER

9. (a) The right to receive Project Water provided for in this Contract may be
sold, transferred, or exchanged to others for reasonable and beneficial uses within the State of
California if such sale, transfer, or exchange is authorized by applicable Federal and State laws,
and applicable guidelines or regulations then in effect. No sale, transfer, or exchange of Project
Water under this Contract may take place without the prior written approval of the Contracting
Officer, except as provided for in subdivision (b) of this Article, and no such sales, transfers, or
exchanges shall be approved absent all appropriate environmental documentation, including but
not limited to documents prepared pursuant to NEPA and ESA. Such environmental
documentation should include, as appropriate, an analysis of groundwater impacts and economic
and social effects, including environmental justice, of the proposed water transfers on both the
transferor and transferee.

(b) In order to facilitate efficient water management by means of water
transfers of the type historically carried out among Project Contractors located within the same
geographical area and to allow the Contractor to participate in an accelerated water transfer
program during the term of this Contract, the Contracting Officer shall prepare, as appropriate,
all necessary environmental documentation including, but not limited to, documents prepared
pursuant to NEPA and ESA, analyzing annual transfers within such geographical areas, and the
Contracting Officer shall determine whether such transfers comply with applicable law.
Following the completion of the environmental documentation, such transfers addressed in such
documentation shall be conducted with advance notice to the Contracting Officer, but shall not

require prior written approval by the Contracting Officer. Such environmental documentation and the Contracting Officer's compliance determination shall be reviewed every five years and updated, as necessary, prior to the expiration of the then-existing five-year period. All subsequent environmental documentation shall include an alternative to evaluate not less than the quantity of Project Water historically transferred within the same geographical area.

(c) For a water transfer to qualify under subdivision (b) of this Article, such water transfer must: (i) be for irrigation purposes for lands irrigated within the previous three years, for M&I use, groundwater recharge, water banking, or fish and wildlife resources; not lead to land conversion; and be delivered to established cropland, wildlife refuges, groundwater basins or M&I use; (ii) occur within a single Year; (iii) occur between a willing seller and a willing buyer; (iv) convey water through existing facilities with no new construction or modifications to facilities and be between existing Project Contractors and/or the Contractor and the United States, Department of the Interior; and (v) comply with all applicable Federal, State, and local or tribal laws and requirements imposed for protection of the environment and Indian Trust Assets, as defined under Federal law.

APPLICATION OF PAYMENTS AND ADJUSTMENTS

10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M, capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of the Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000 shall be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment, at the option of the Contractor, may be credited against amounts to become due to the United States by the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole remedy of the Contractor or anyone having or claiming to

663 have the right to the use of any of the Project Water supply provided for herein. All credits and
664 refunds of overpayments shall be made within 30 days of the Contracting Officer obtaining
665 direction as to how to credit or refund such overpayment in response to the notice to the
666 Contractor that it has finalized the accounts for the Year in which the overpayment was made.

667 (b) All advances for miscellaneous costs incurred for work requested by the
668 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs
669 when the work has been completed. If the advances exceed the actual costs incurred, the
670 difference will be refunded to the Contractor. If the actual costs exceed the Contractor's
671 advances, the Contractor will be billed for the additional costs pursuant to Article 25.

672 TEMPORARY REDUCTIONS-RETURN FLOWS

673 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and the
674 requirements of Federal law; and (ii) the obligations of the United States under existing
675 contracts, or renewals thereof, providing for water deliveries from the Project, the Contracting
676 Officer shall make all reasonable efforts to optimize Project Water deliveries to the Contractor as
677 provided in this Contract.

678 (b) The Contracting Officer or Operating Non-Federal Entity/Entities may
679 temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as herein
680 provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any
681 of the Project facilities or any part thereof necessary for the delivery of Project Water to the
682 Contractor, but so far as feasible the Contracting Officer or Operating Non-Federal Entity will
683 give the Contractor due notice in advance of such temporary discontinuance or reduction, except
684 in case of emergency, in which case no notice need be given; Provided, That the United States
685 shall use its best efforts to avoid any discontinuance or reduction in such service. Upon

resumption of service after such reduction or discontinuance, and if requested by the Contractor, the United States will, if possible, deliver the quantity of Project Water which would have been delivered hereunder in the absence of such discontinuance or reduction.

(c) The United States reserves the right to all seepage and return flow water derived from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the Contractor's Service Area; Provided, That this shall not be construed as claiming for the United States any right to seepage or return flow being put to reasonable and beneficial use pursuant to this Contract within the Contractor's Service Area²¹ by the Contractor or those claiming by, through, or under the Contractor.

CONSTRAINTS ON THE AVAILABILITY OF WATER

12. (a) In its operation of the Project, the Contracting Officer will use all reasonable means to guard against a Condition of Shortage in the quantity of water to be made available to the Contractor pursuant to this Contract. In the event the Contracting Officer determines that a Condition of Shortage appears probable, the Contracting Officer will notify the Contractor of said determination as soon as practicable.

(b) If there is a Condition of Shortage because of errors in physical operations of the Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision (a) of Article 18 of this Contract, no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom.

(c) DIVISIONAL ISSUE - APPORTIONMENT AMONG CONTRACTORS.

(d) DIVISIONAL ISSUE - M&I Water Service Contracts

²¹ Divisions may propose alternate language

(e) DIVISIONAL ISSUE – Reservation of Rights re M&I Shortage Policy

UNAVOIDABLE GROUNDWATER PERCOLATION

13. To the extent applicable, the Contractor shall not be deemed to have delivered Irrigation Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such lands are irrigated with groundwater that reaches the underground strata as an unavoidable result of the delivery of Irrigation Water by the Contractor to Eligible Lands.

RULES AND REGULATIONS²²

14. The parties agree that the delivery of Irrigation Water or use of Federal facilities pursuant to this Contract is subject to Federal Reclamation law, including but not limited to the Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and the rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

WATER AND AIR POLLUTION CONTROL

15. The Contractor, in carrying out this Contract, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of California, and shall obtain all required permits or licenses from the appropriate Federal, State, or local authorities.

QUALITY OF WATER²³

16. (a) Project facilities used to deliver Project Water to the Contractor pursuant to this Contract shall be operated and maintained to enable the United States to deliver Project Water to the Contractor in accordance with the water quality standards specified in subsection 2(b) of the Act of August 26, 1937 (50 Stat. 865), as added by Section 101 of the Act of October 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States is under no

²² Contractor Specific Issue - This may need to be modified on an individual contractor basis. Some contractors may be precluded by law to agreeing to all or part of this Article.

obligation to construct or furnish water treatment facilities to maintain or to improve the quality of Water Delivered to the Contractor pursuant to this Contract. The United States does not warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

(b) The O&M of Project facilities shall be performed in such manner as is practicable to maintain the quality of raw water made available through such facilities at the highest level reasonably attainable as determined by the Contracting Officer. The Contractor shall be responsible for compliance with all State and Federal water quality standards applicable to surface and subsurface agricultural drainage discharges generated through the use of Federal or Contractor facilities or Project Water provided by the Contractor within the Contractor's Service Area.

(c) [DIVISIONAL ISSUE – DRAINAGE, WHERE APPLICABLE]

WATER ACQUIRED BY THE CONTRACTOR
OTHER THAN FROM THE UNITED STATES

17. (a) Water or water rights now owned or hereafter acquired by the Contractor other than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may be simultaneously transported through the same distribution facilities of the Contractor subject to the following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were constructed without funds made available pursuant to Federal Reclamation law, the provisions of Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation Water; (ii) the eligibility of land to receive

²³ Some Contractors may request tailored language regarding water quality.

Irrigation Water must be established through the certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation Water and non-Project water are/were constructed with funds made available pursuant to Federal Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal Reclamation law, unless the Contractor pays to the United States the incremental fee described in 43 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the cost to the Federal Government, including interest, of storing or delivering non-Project water, which for purposes of this Contract shall be determined as follows: The quotient shall be the unpaid distribution system costs divided by the total irrigable acreage within the Contractor's Service Area. The incremental fee per acre is the mathematical result of such quotient times the interest rate determined using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental fee will be charged to each acre of excess or full cost land within the Contractor's Service Area that receives non-Project water through Federally financed or constructed facilities. The incremental fee calculation methodology will continue during the term of this Contract absent the promulgation of a contrary Reclamation-wide rule, regulation, or policy adopted after the Contractor has been afforded the opportunity to review and comment on the proposed rule, regulation, or policy. If such rule, regulation, or policy is adopted it shall supercede this provision.

(b) Water or water rights now owned or hereafter acquired by the Contractor, other than from the United States, may be stored, conveyed, and/or diverted through Project

779 facilities, subject to the completion of appropriate environmental documentation, with the
780 approval of the Contracting Officer and the execution of any contract determined by the
781 Contracting Officer to be necessary, consistent with the following provisions:

782 (1) The Contractor may introduce non-Project water into Project
783 facilities and deliver said water to lands within the Contractor's Service Area, including
784 Ineligible Lands, subject to payment to the United States and/or to any applicable Operating
785 Non-Federal Entity of an appropriate rate as determined by the applicable Project ratesetting
786 policy, the R R A, and the Project use power policy, if such Project use power policy is
787 applicable, each as amended, modified, or superceded from time to time.

(2) Delivery of such
788 or quality of water available to other Project Contractors; (iii) interfere with the delivery of
789 contractual water entitlements to any other Project Contractors; or (iv) interfere with the physical
790 maintenance of the Project facilities.

791 (3) Neither the United States nor the Operating Non-Federal Entity
792 shall be responsible for control, care, or distribution of the non-Project water before it is
793 introduced into or after it is delivered from the Project facilities. The Contractor hereby releases
794 and agrees to defend and indemnify the United States and the Operating Non-Federal Entity, and
795 their respective officers, agents, and employees, from any claim for damage to persons or
796 property, direct or indirect, resulting from the acts of the Contractor, its officers', employees',
797 agents' or assigns', act(s) in (i) extracting or diverting non-Project water from any source, or (ii)
798 diverting such non-Project water into Project facilities.

799 (4) Diversion of such non-Project water into Project facilities shall be
800 consistent with all applicable laws, and if involving groundwater, consistent with any applicable
801 groundwater management plan for the area from which it was extracted.

(5) After Project purposes are met, as determined by the Contracting Officer, the United States and the Contractor shall share priority to utilize the remaining capacity of the facilities declared to be available by the Contracting Officer for conveyance and transportation of non-Project water prior to any such remaining capacity being made available to non-Project contractors. [DIVISIONAL ISSUE – DIVISIONS MAY SEEK LANGUAGE PROVIDING FOR WHEELING AND NON-PROJECT WATER PURSUANT TO CVPIA SECTION 3408(c), ETC.]

OPINIONS AND DETERMINATIONS

18. (a) Where the terms of this Contract provide for actions to be based upon the opinion or determination of either party to this Contract, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. Both parties, notwithstanding any other provisions of this Contract, expressly reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each opinion or determination by either party shall be provided in a timely manner. Nothing in subdivision (a) of Article 18 of this Contract is intended to or shall affect or alter the standard of judicial review applicable under Federal law to any opinion or determination implementing a specific provision of Federal law embodied in statute or regulation.

(b) The Contracting Officer shall have the right to make determinations necessary to administer this Contract that are consistent with the provisions of this Contract, the laws of the United States and of the State of California, and the rules and regulations promulgated by the Secretary of the Interior. Such determinations shall be made in consultation with the Contractor to the extent reasonably practicable.

825 COORDINATION AND COOPERATION

826 19. (a) In order to further their mutual goals and objectives, the Contracting
827 Officer and the Contractor shall communicate, coordinate, and cooperate with each other, and
828 with other affected Project Contractors, in order to improve the operation and management of the
829 Project. The communication, coordination, and cooperation regarding operations and
830 management shall include, but not be limited to, any action which will or may materially affect
831 the quantity or quality of Project Water supply, the allocation of Project Water supply, and
832 Project financial matters including, but not limited to, budget issues. The communication,
833 coordination, and cooperation provided for hereunder shall extend to all provisions of this
834 Contract. Each party shall retain exclusive decision making authority for all actions, opinions,
835 and determinations to be made by the respective party.

836 (b) Within 120 days following the effective date of this Contract, the
837 Contractor, other affected Project Contractors, and the Contracting Officer shall arrange to meet
838 with interested Project Contractors to develop a mutually agreeable, written Project-wide
839 process, which may be amended as necessary separate and apart from this Contract. The goal of
840 this process shall be to provide, to the extent practicable, the means of mutual communication
841 and interaction regarding significant decisions concerning Project operation and management on
842 a real-time basis.

843 (c) In light of the factors referred to in subdivision (b) of Article 3 of this
844 Contract, it is the intent of the Secretary to improve water supply reliability. To carry out this
845 intent:

846 (1) The Contracting Officer will, at the request of the Contractor,
847 assist in the development of integrated resource management plans for the Contractor. Further,

the Contracting Officer will, as appropriate, seek authorizations for implementation of partnerships to improve water supply, water quality, and reliability.

(2) The Secretary will, as appropriate, pursue program and project implementation and authorization in coordination with Project Contractors to improve the water supply, water quality, and reliability of the Project for all Project purposes.

(3) The Secretary will coordinate with Project Contractors and the State of California to seek improved water resource management.

(4) The Secretary will coordinate actions of agencies within the Department of the Interior that may impact the availability of water for Project purposes.

(5) The Contracting Officer shall periodically, but not less than annually, hold division level meetings to discuss Project operations, division level water management activities, and other issues as appropriate.

(d) Without limiting the contractual obligations of the Contracting Officer under the other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety, or the physical integrity of structures or facilities.

CHARGES FOR DELINQUENT PAYMENTS

20. (a) The Contractor shall be subject to interest, administrative and penalty charges on delinquent installments or payments. When a payment is not received by the due date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond the due date. When a payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative charge to cover additional costs of billing and processing the delinquent payment. When a payment is delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six (6%) percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor shall pay any fees incurred for debt collection services

associated with a delinquent payment.

(b) The interest charge rate shall be the greater of the rate prescribed quarterly in the Federal Register by the Department of the Treasury for application to overdue payments, or the interest rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and remain fixed for the duration of the delinquent period.

(c) When a partial payment on a delinquent account is received, the amount received shall be applied, first to the penalty, second to the administrative charges, third to the accrued interest, and finally to the overdue payment.

EQUAL OPPORTUNITY

21. During the performance of this Contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without discrimination because of race, color, religion, sex, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order

No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Contractor will furnish all information and reports required by said amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in said amended Executive Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

22. (a) The obligation of the Contractor to pay the United States as provided in this Contract is a general obligation of the Contractor notwithstanding the manner in which the obligation may be distributed among the Contractor's water users and notwithstanding the default of individual water users in their obligations to the Contractor.

(b) The payment of charges becoming due hereunder is a condition precedent to receiving benefits under this Contract. The United States shall not make water available to the Contractor through Project facilities during any period in which the Contractor may be in arrears in the advance payment of water rates due the United States. The Contractor shall not furnish water made available pursuant to this Contract for lands or parties which are in arrears in the advance payment of water rates levied or established by the Contractor.

(c) With respect to subdivision (b) of this Article, the Contractor shall have no obligation to require advance payment for water rates which it levies.

COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well as with their respective implementing regulations and guidelines imposed by the U.S. Department of the Interior and/or Bureau of Reclamation.

(b) These statutes require that no person in the United States shall, on the grounds of race, color, national origin, handicap, or age, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor agrees to immediately take any measures necessary to implement this obligation, including permitting officials of the United States to inspect premises, programs, and documents.

(c) The Contractor makes this agreement in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Contractor recognizes and agrees that such Federal assistance will be extended in reliance on the representations and agreements made in this Article, and that the United States reserves the right to seek judicial enforcement thereof.

PRIVACY ACT COMPLIANCE

24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a) (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.) in maintaining Landholder acreage certification and reporting records, required to be submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

(b) With respect to the application and administration of the criminal penalty provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible for maintaining the certification and reporting records referenced in (a) above are

considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

(c) The Contracting Officer or a designated representative shall provide the Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior, Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information contained in the Landholder's certification and reporting records.

(d) The Contracting Officer shall designate a full-time employee of the Bureau of Reclamation to be the System Manager who shall be responsible for making decisions on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is authorized to grant requests by individuals for access to their own records.

(e) The Contractor shall forward promptly to the System Manager each proposed denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System Manager with information and records necessary to prepare an appropriate response to the requester. These requirements do not apply to individuals seeking access to their own certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy Act as a basis for the request.

CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

25. In addition to all other payments to be made by the Contractor pursuant to this Contract, the Contractor shall pay to the United States, within 60 days after receipt of a bill and detailed statement submitted by the Contracting Officer to the Contractor for such specific items of direct cost incurred by the United States for work requested by the Contractor associated with this Contract plus indirect costs in accordance with applicable Bureau of Reclamation policies and procedures. All such amounts referred to in this Article shall not exceed the amount agreed to in writing in advance by the Contractor. This Article shall not apply to costs for routine contract administration.

WATER CONSERVATION

26. (a) Prior to the delivery of water provided from or conveyed through

1000 Federally constructed or Federally financed facilities pursuant to this Contract, the Contractor
1001 shall be implementing an effective water conservation and efficiency program based on the
1002 Contractor's water conservation plan that has been determined by the Contracting Officer to meet
1003 the conservation and efficiency criteria for evaluating water conservation plans established under
1004 Federal law. The water conservation and efficiency program shall contain definite water
1005 conservation objectives, appropriate economically feasible water conservation measures, and
1006 time schedules for meeting those objectives. Continued Project Water delivery pursuant to this
1007 Contract shall be contingent upon the Contractor's continued implementation of such water
1008 conservation program. In the event the Contractor's water conservation plan or any revised water
1009 conservation plan completed pursuant to subdivision (d) of Article 26 of this Contract have not
1010 yet been determined by the Contracting Officer to meet such criteria, due to circumstances which
1011 the Contracting Officer determines are beyond the control of the Contractor, water deliveries
1012 shall be made under this Contract so long as the Contractor diligently works with the Contracting
1013 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor
1014 immediately begins implementing its water conservation and efficiency program in accordance
1015 with the time schedules therein.

1016 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1017 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall
1018 implement the Best Management Practices identified by the time frames issued by the California
1019 Urban Water Conservation Council for such M&I Water unless any such practice is determined
1020 by the Contracting Officer to be inappropriate for the Contractor.

1021 (c) The Contractor shall submit to the Contracting Officer a report on the
1022 status of its implementation of the water conservation plan on the reporting dates specified in the

1023 then existing conservation and efficiency criteria established under Federal law.

1024 (d) At five-year intervals, the Contractor shall revise its water conservation
1025 plan to reflect the then-current conservation and efficiency criteria for evaluating water
1026 conservation plans established under Federal law and submit such revised water management
1027 plan to the Contracting Officer for review and evaluation. The Contracting Officer will then
1028 determine if the water conservation plan meets Reclamation's then-current conservation and
1029 efficiency criteria for evaluating water conservation plans established under Federal law.

1030 (e) If the Contractor is engaged in direct groundwater recharge, such activity
1031 shall be described in the Contractor's water conservation plan.

1032 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1033 27. Except as specifically provided in Article 17 of this Contract, the provisions of
1034 this Contract shall not be applicable to or affect non-Project water or water rights now owned or
1035 hereafter acquired by the Contractor or any user of such water within the Contractor's Service
1036 Area. Any such water shall not be considered Project Water under this Contract. In addition,
1037 this Contract shall not be construed as limiting or curtailing any rights which the Contractor or
1038 any water user within the Contractor's Service Area acquires or has available under any other
1039 contract pursuant to Federal Reclamation law.

1040 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY²⁴

1041 28. (a) The O&M of a portion of the Project facilities which serve the Contractor,
1042 and responsibility for funding a portion of the costs of such O&M, have been transferred to the
1043 Operating Non-Federal Entity by separate agreement between the United States and the

²⁴ Include where applicable.

Operating Non-Federal Entity. That separate agreement shall not interfere with or affect the rights or obligations of the Contractor or the United States hereunder.

(b) The Contracting Officer has previously notified the Contractor in writing that the O&M of a portion of the Project facilities which serve the Contractor has been transferred to the Operating Non-Federal Entity, and therefore, the Contractor shall pay directly to the Operating Non-Federal Entity, or to any successor approved by the Contracting Officer under the terms and conditions of the separate agreement between the United States and the Operating Non-Federal Entity described in subdivision (a) of this Article, all rates, charges, or assessments of any kind, including any assessment for reserve funds, which the Operating Non-Federal Entity or such successor determines, sets, or establishes for the O&M of the portion of the Project facilities operated and maintained by the Operating Non-Federal Entity or such successor. Such direct payments to the Operating Non-Federal Entity or such successor shall not relieve the Contractor of its obligation to pay directly to the United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing Component(s) except to the extent the Operating Non-Federal Entity collects payments on behalf of the United States in accordance with the separate agreement identified in subdivision (a) of this Article.

(c) For so long as the O&M of any portion of the Project facilities serving the Contractor is performed by the Operating Non-Federal Entity, or any successor thereto, the Contracting Officer shall adjust those components of the Rates for Water Delivered under this Contract representing the cost associated with the activity being performed by the Operating Non-Federal Entity or its successor.

(d) In the event the O&M of the Project facilities operated and maintained by the Operating Non-Federal Entity is re-assumed by the United States during the term of this

Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the Contractor for Project Water under this Contract representing the O&M costs of the portion of such Project facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of written notification from the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered Pricing Component(s) specified in the revised Exhibit "B" directly to the United States in compliance with Article 7 of this Contract.

[Divisional Issue – inclusion of new Article 28.1 for contracts involving additional
Operating CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

29. The expenditure or advance of any money or the performance of any obligation of the United States under this Contract shall be contingent upon appropriation or allotment of funds. Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations under this Contract. No liability shall accrue to the United States in case funds are not appropriated or allotted.

BOOKS, RECORDS, AND REPORTS

30. (a) The Contractor shall establish and maintain accounts and other books and records pertaining to administration of the terms and conditions of this Contract, including: the Contractor's financial transactions, water supply data, and Project land and right-of-way agreements; the water users' land-use (crop census), land ownership, land-leasing and water use data; and other matters that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting Officer in such form and on such date or dates as the Contracting Officer may require. Subject to applicable Federal laws and regulations, each party to this Contract shall have the right during office hours to examine and make copies of the other party's books and records relating to matters covered by this Contract.

(b) Notwithstanding the provisions of subdivision (a) of this Article, no books, records, or other information shall be requested from the Contractor by the Contracting Officer unless such books, records, or information are reasonably related to the administration or performance of this Contract. Any such request shall allow the Contractor a reasonable period of

1090 time within which to provide the requested books, records, or information.

1091 (c) At such time as the Contractor provides information to the Contracting
1092 Officer pursuant to subdivision (a) of this Article, a copy of such information shall be provided
1093 to the Operating Non-Federal Entity.

1094 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1095 31. (a) The provisions of this Contract shall apply to and bind the successors and
1096 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1097 therein shall be valid until approved in writing by the Contracting Officer.

1098 (b) The assignment of any right or interest in this Contract by either party
1099 shall not interfere with the rights or obligations of the other party to this Contract absent the
1100 written concurrence of said other party.

1101 (c) The Contracting Officer shall not unreasonably condition or withhold his
1102 approval of any proposed assignment.

1103 SEVERABILITY

1104 32. In the event that a person or entity who is neither (i) a party to a Project contract,
1105 nor (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii)
1106 an association or other form of organization whose primary function is to represent parties to
1107 Project contracts, brings an action in a court of competent jurisdiction challenging the legality or
1108 enforceability of a provision included in this Contract and said person, entity, association, or
1109 organization obtains a final court decision holding that such provision is legally invalid or
1110 unenforceable and the Contractor has not intervened in that lawsuit in support of the plaintiff(s),
1111 the parties to this Contract shall use their best efforts to (i) within 30 days of the date of such
1112 final court decision identify by mutual agreement the provisions in this Contract which must be

1113 revised, and (ii) within three months thereafter promptly agree on the appropriate revision(s).
1114 The time periods specified above may be extended by mutual agreement of the parties. Pending
1115 the completion of the actions designated above, to the extent it can do so without violating any
1116 applicable provisions of law, the United States shall continue to make the quantities of Project
1117 Water specified in this Contract available to the Contractor pursuant to the provisions of this
1118 Contract which were not found to be legally invalid or unenforceable in the final court decision.

1119 RESOLUTION OF DISPUTES

1120 33. Should any dispute arise concerning any provisions of this Contract, or the
1121 parties' rights and obligations thereunder, the parties shall meet and confer in an attempt to
1122 resolve the dispute. Prior to the Contractor commencing any legal action, or the Contracting
1123 Officer referring any matter to Department of Justice, the party shall provide to the other party
1124 30 days' written notice of the intent to take such action; Provided, That such notice shall not be
1125 required where a delay in commencing an action would prejudice the interests of the party that
1126 intends to file suit. During the 30-day notice period, the Contractor and the Contracting Officer
1127 shall meet and confer in an attempt to resolve the dispute. Except as specifically provided,
1128 nothing herein is intended to waive or abridge any right or remedy that the Contractor or the
1129 United States may have.

1130 OFFICIALS NOT TO BENEFIT

1131 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1132 Contractor shall benefit from this Contract other than as a water user or landowner in the same
1133 manner as other water users or landowners.

1134 CHANGES IN CONTRACTOR'S SERVICE AREA

1135 35. (a) While this Contract is in effect, no change may be made in the
1136 Contractor's Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger,
1137 or otherwise, except upon the Contracting Officer's written consent.

1138 (b) Within 30 days of receipt of a request for such a change, the Contracting
1139 Officer will notify the Contractor of any additional information required by the Contracting
1140 Officer for processing said request, and both parties will meet to establish a mutually agreeable
1141 schedule for timely completion of the process. Such process will analyze whether the proposed
1142 change is likely to: (i) result in the use of Project Water contrary to the terms of this Contract;
1143 (ii) impair the ability of the Contractor to pay for Project Water furnished under this Contract or
1144 to pay for any Federally-constructed facilities for which the Contractor is responsible; and (iii)
1145 have an impact on any Project Water rights applications, permits, or licenses. In addition, the
1146 Contracting Officer shall comply with the NEPA and the ESA. The Contractor will be
1147 responsible for all costs incurred by the Contracting Officer in this process, and such costs will
1148 be paid in accordance with Article 25 of this Contract.

1149 FEDERAL LAWS

1150 36. By entering into this Contract, the Contractor does not waive its rights to contest
1151 the validity or application in connection with the performance of the terms and conditions of this
1152 Contract of any Federal law or regulation; Provided, That the Contractor agrees to comply with
1153 the terms and conditions of this Contract unless and until relief from application of such Federal
1154 law or regulation to the implementing provision of the Contract is granted by a court of
1155 competent jurisdiction.

1156 NOTICES

1157
1158 37. Any notice, demand, or request authorized or required by this Contract shall be
1159 deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid, or
1160 delivered to the Area Manager _____, and on
1161 behalf of the United States, when mailed, postage prepaid, or delivered to the Board of
1162 Directors/City Council of the _____. The designation of the
1163 addressee or the address may be changed by notice given in the same manner as provided in this
1164 Article for other notices.

R.O. Draft 6/10-2003
R.O. Draft 5/19-2003
R. O. Draft 5/09-2003
R.O. Draft 11/01-2000
CVP-Wide Form 11-05
Contract No. _____ - LTR1

CONFIRMATION OF CONTRACT²⁵

38. The Contractor, after the execution of this Contract, shall promptly seek to secure a decree of a court of competent jurisdiction of the State of California, confirming the execution of this Contract. The Contractor shall furnish the United States a certified copy of the final decree, the validation proceedings, and all pertinent supporting records of the court approving and confirming this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the Contractor.

²⁵ Permission is pending to use alternate provision for M&I only contractors.

R.O. Draft 6/10-2003
R.O. Draft 5/19-2003
R. O. Draft 5/09-2003
R.O. Draft 11/01-2000
CVP-Wide Form 11-05
Contract No. _____ - LTR1

1173 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of
1174 the day and year first above written.

1175 THE UNITED STATES OF AMERICA

1176 By: _____
1177 Regional Director, Mid-Pacific Region
1178 Bureau of Reclamation

1179 [NAME OF CONTRACTOR]

1180 By: _____
1181 President of the Board of Directors

1182 Attest:

1183 By: _____
1184 Secretary of the Board of Directors

R.O. Draft 6/10-2003
R.O. Draft 5/19-2003
R. O. Draft 5/09-2003
R.O. Draft 11/01-2000
CVP-Wide Form 11-05
Contract No. _____ - LTR1

EXHIBIT A

[Map or Description of Service Area]

2000

R. O. Draft 5/09-2003

R.O. Draft 11/01-

CVP-Wide Form 11-05

Contract No. _____ - LTR1

EXHIBIT B

[Initial Rates and Charges]

APPENDIX A: TABLE A-1 GENERAL SUMMARY AND COMPARISON OF SELECTED DRAFT <u>DRAFT 2003</u> CONTRACT PROVISIONS			
Contract Provisions	<u>Draft General Summary of Existing Contract Provisions</u> (Refer to Table A-2 for unique elements by Contractor)	General Summary of <u>Proposed</u> Preferred Action Contract Provisions ¹	
	<u>Generally based on 2003 personal communications</u> (B. Holt, Reclamation, 2003) information; (pers. comm., B. Holt 2003)	Common to All Ten ¹ <u>2003 Draft RAFT-Final</u> Long Term Contracts ²	Elements Unique to Contracts that Include Irrigation Water ³
Explanatory Recitals	No similar recital.	Assumes water rights held by CVP.	
	No similar recital.	Assumes CVP water has been relied upon by urban and agricultural areas in California for more than 50 years and is considered an essential part of its water supply by the contractor.	
	No similar recital.	Assumes regional economies depend on CVP water.	
	No similar recital.	Assumes the Secretary of the Interior intends, through coordination, cooperation, and partnerships, to pursue measures to improve the water supply, water quality, and reliability of the CVP.	
	Assumes the need for the 3408(j) study.	Assumes CVP will facilitate cooperative efforts among local water service agencies to develop the Redding Groundwater Basin for conjunctive management and use with CVP water supplies.	
Definitions	Assumes payments in addition to the Rates determined by the contracting officer each year.	Defines "Charges" as "payments required by Federal contracting officer law in addition to the Rates and Tiered Pricing Components specified in the contract."	
	No similar definition.	Defines "Contract Total" as "the maximum amount of water to which the contractor is entitled" under the contract.	

¹ Contract provisions were based on draft form contracts dated as follows: June 16, 2003 for BVWD, CCSD, City of Redding-Buckeye, City of Shasta Lake, CCCSD, and SCWA; June 26, 2003 for SCSD; and June 27, 2003 for KCSA and MGCSD.

~~The 10th contract, although informal, is a Memorandum of Agreement between two federal agencies and is not covered in this table.~~

² Ten contractors comprise the Shasta and Trinity River Division. The tenth "contract" is actually a Memorandum of Understanding between two federal agencies: USFS (at Centimudi Boat Ramp) and Reclamation, and is not included in this table.

³ BVWD and CCWD ¹ ~~Excludes the USFS Centimudi Memorandum of Understanding.~~

APPENDIX A: TABLE A-1 GENERAL SUMMARY AND COMPARISON OF SELECTED DRAFT <u>DRAFT 2003</u> CONTRACT PROVISIONS			
Contract Provisions	<u>Draft General Summary of Existing Contract Provisions</u> (Refer to Table A-2 for unique elements by Contractor)	General Summary of <u>Proposed</u> Preferred Action Contract Provisions ¹	
	<u>Generally based on 2003 personal communications</u> (B. Holt, Reclamation, 2003) information; (pers. comm., B. Holt 2003)	Common to All Ten ¹ <u>2003 Draft RAFT-Final</u> Long Term Contracts ²	Elements Unique to Contracts that Include Irrigation Water ³
	Existing long-term contract: No similar definition. Interim renewal contract: Assumes to be individual or entity owning or leasing lands served with irrigation water.		Defines "Landholder" as "a party that directly or indirectly owns or leases nonexempt land."
	Existing long-term contract: Assumes use of water delivered to land in units less than or equal to 2 acres to be M&I use unless contracting officer is satisfied that use is irrigation. Interim renewal contract: Assumes same as existing long-term contracts except applied to units less than 5 acres.	Defines "M&I Water" as CVP "water made available to the contractor for purposes other than the commercial production of agricultural crops or livestock "	Defines "M&I Water" as "CVP water, other than irrigation water, made available to the contractor. M&I Water shall include water used for human use and purposes such as the watering of landscaping or pasture for animals (e.g., horses) which are kept for personal enjoyment or water delivered to land holdings operated in units of less than 5 acres unless the contractor establishes to the satisfaction of the contracting officer that the use of water delivered to any such landholding is a use described in [the definition for "irrigation water"]".
	No similar definition.	Defines "Recent Historic Average" as "the most recent 5-year average of the final forecast of water made available to the contractor" under the LTRC or its preceding contract(s).	
	No similar definition.	Defines "Tiered Pricing Component" as "the incremental amount to be paid for each acre-foot of water delivered."	

¹ Contract provisions were based on draft form contracts dated as follows: June 16, 2003 for BVWD, CCSD, City of Redding-Buckeye, City of Shasta Lake, CCCSD, and SCWA; June 26, 2003 for SCSD; and June 27, 2003 for KCSA and MGCSD.

² Ten contractors comprise the Shasta and Trinity River Division. The tenth "contract" is actually a Memorandum of Understanding between two federal agencies: USFS (at Centimudi Boat Ramp) and Reclamation, and is not included in this table.

³ BVWD and CCWD

¹ The 10th contract, although informal, is a Memorandum of Agreement between two federal agencies and is not covered in this table.

⁺ Excludes the USFS Centimudi Memorandum of Understanding.

APPENDIX A: TABLE A-1 GENERAL SUMMARY AND COMPARISON OF SELECTED DRAFT <u>DRAFT 2003</u> CONTRACT PROVISIONS			
Contract Provisions	<u>Draft General Summary of Existing Contract Provisions</u> (Refer to Table A-2 for unique elements by Contractor)	General Summary of <u>Proposed</u> Preferred Action Contract Provisions ¹	
	<u>Generally based on 2003 personal communications</u> (B. Holt, Reclamation, 2003) information; (pers. comm., B. Holt 2003)	Common to All Ten ¹ <u>2003 Draft RAFT-Final</u> Long Term Contracts ²	Elements Unique to Contracts that Include Irrigation Water ³
	No similar definition.		Defines "Excess Lands" as all lands in excess of the limitations contained in Section 204 of the RRA.
	No similar definition.		Defines "Landholder" as "a party that directly or indirectly owns or leases nonexempt land."
Term of Contract and Renewal Terms	Existing long-term contract: Assumes shall remain in effect through December 31, 2004; right to renew for additional terms not to exceed 40 years on mutually agreeable terms. Also assumes conversion to repayment contract authorized upon mutually agreeable terms once project costs allocated. Interim renewal contract: Assumes shall remain in effect through February 28, 2002; assumes renewal will be 25-year long-term renewal or further interim renewal under specified conditions.	States that contract will be effective from March 1, 2004, through February 28, 2029. States that contract "shall be renewed for a period of 25 years." The term for subsequent renewal of M&I water "shall be . . . for a period of 25 years and thereafter shall be renewed for successive periods of up to 40 years each, . . . consistent with then-existing contracting officer-wide policy . . . and consistent with Federal and state law."	States that "contract, insofar as it pertains to the furnishing of irrigation water to the contractor, shall be renewed for a period of 25 years." Makes renewal contingent on several provisions, including the following: "(1) the contractor has prepared a water conservation plan that meets the Federal conservation and efficiency criteria for evaluating such plans; (2) the contractor is implementing an effective water conservation and efficiency program; [and] (3) the contractor is maintaining all water measuring devices and implementing water measurement methods."
Water to Be Made Available and Delivered	Existing long-term contract: Assumes water will be made available according	Specifies the amount of water available for delivery to the contractor.	

¹ Contract provisions were based on draft form contracts dated as follows: June 16, 2003 for BVWD, CCSD, City of Redding-Buckeye, City of Shasta Lake, CCCSD, and SCWA; June 26, 2003 for SCSD; and June 27, 2003 for KCSA and MGCSD.

~~The 10th contract, although informal, is a Memorandum of Agreement between two federal agencies and is not covered in this table.~~

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³ BVWD and CCWD ¹ Excludes the USFS Centimudi Memorandum of Understanding.

APPENDIX A: TABLE A-1 GENERAL SUMMARY AND COMPARISON OF SELECTED DRAFT <u>DRAFT 2003</u> CONTRACT PROVISIONS			
Contract Provisions to the Contractor	<u>Draft General Summary of Existing Contract Provisions</u> (Refer to Table A-2 for unique elements by Contractor)	General Summary of <u>Proposed</u> Preferred Action Contract Provisions ¹	
	<u>Generally based on 2003 personal communications</u> (B. Holt, Reclamation, 2003) information; (pers. comm., B. Holt 2003)	Common to All Ten ¹ <u>2003 Draft RAFT-Final</u> Long Term Contracts ²	Elements Unique to Contracts that Include Irrigation Water ³
	to schedule; application of laws and provision re facility outages and shortage provision implicit. Interim renewal contract: Assumes water will be made available according to schedule, existing rules; provision re facility outages and shortage provision explicit.	States that because of constraints on CVP water, “the likelihood of [a] contractor actually receiving the amount of water” specified as available for delivery “in any given year is uncertain.” Further states that “modeling referenced in the PEIS projected that the contract total...will not be available...in many years.” Cites recent historic average of water made available to contractor.	
	No similar explicit requirement.	Assumes compliance with applicable laws	
	Existing long-term contract: No similar explicit terms; reasonable and beneficial use required by Federal and state law. Interim renewal contract: Assumes contractor required to make reasonable and beneficial use of water; contractor permitted to use CVP water in groundwater recharge program in accordance with state law and water management plan.	Allows CVP or other water furnished pursuant to the contract to be used for groundwater recharge, groundwater banking, surface water storage, and similar programs. Requires that any direct recharge program be described in the contractor's Water Conservation Plan. Allows use of CVP water or other water furnished pursuant to the contract be used for such programs with approval of contracting officer, which would be based on environmental documentation and CVP water rights and operational concerns.	

¹ Contract provisions were based on draft form contracts dated as follows: June 16, 2003 for BVWD, CCSD, City of Redding-Buckeye, City of Shasta Lake, CCCSD, and SCWA; June 26, 2003 for SCSD; and June 27, 2003 for KCSA and MGCSD.

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APPENDIX A: TABLE A-1 GENERAL SUMMARY AND COMPARISON OF SELECTED DRAFT <u>DRAFT 2003</u> CONTRACT PROVISIONS			
Contract Provisions	<u>Draft General Summary of Existing Contract Provisions</u> (Refer to Table A-2 for unique elements by Contractor)	General Summary of <u>Proposed</u> Preferred Action Contract Provisions ¹	
	<u>Generally based on 2003 personal communications</u> (B. Holt, Reclamation, 2003) information; (pers. comm., B. Holt 2003)	Common to All Ten ¹ <u>2003 Draft RAFT-Final</u> Long Term Contracts ²	Elements Unique to Contracts that Include Irrigation Water ³
	Existing long-term contract: Assumes compliance with laws; implicit obligation to meet applicable requirements under environmental documents. Interim renewal contract: Assumes explicit obligation on compliance with applicable requirements of biological opinions and other environmental documents for contracting.	Requires that contractor comply with applicable requirements in Biological Opinions prepared concerning the contract to comply with the Endangered Species Act that are within the contractor's legal authority to implement. States that contractor can challenge or seek judicial relief with respect to Biological Opinions or other environmental documentation.	
	Existing long-term contract: Assumes contracting officer will strive to develop additional firm supplies. Interim renewal contract: Assumes contracting officer will determine if additional water can be made available; if so, will be made available in accordance with statutes, regulations, policies, and guidelines.	States that contracting officer will determine whether CVP water or other water available to the CVP can be made available to contractor in addition to the contract total, in accordance with applicable statutes, regulations, guidelines, and policies.	
	Existing long-term contract: No similar provision. Interim renewal contract: Contract may request to carry over or preuse contract supplies.	States that contractor can request to "reschedule" (i.e., to "preuse" or "carry over") water made available under the contract.	

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	Existing long-term contract: No similar provision. Interim renewal contract: Upon written approval by contracting officer specifying terms and conditions, water may be delivered for purposes other than irrigation or M&I.	States that CVP water furnished to the contractor "may be delivered for other than irrigation or M&I purposes" upon written approval by contracting officer in accordance with terms and conditions specified in approval.	
	Existing long-term contract: No similar provision. Interim renewal contract: No similar provision.	States that contracting officer will "make reasonable efforts to protect water rights necessary for the [CVP] and to provide the water available" under the contract Further states that contracting officer shall not object to contractor's participation in administrative proceedings related to water rights	
Time for Delivery of Water	Assumes methods for determining timing of deliveries.	Assumes methods for determining timing of water deliveries	
Point of Diversion and Responsibility for Distribution of Water	Assumes methods for determining point of diversion.	Assumes methods for determining point(s) of diversion; assumes measurement at points of delivery.	States that "the contracting officer shall make all reasonable efforts to maintain sufficient flows and levels of water in [water body specific to each contractor]."

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	<u>Generally based on 2003 personal communications</u> (B. Holt, Reclamation, 2003) information; (pers. comm., B. Holt 2003)	Common to All Ten ¹ <u>2003 Draft RAFT-Final</u> Long Term Contracts ²	Elements Unique to Contracts that Include Irrigation Water ³
Measurement of Water within the District/Service Area	Existing long-term contract: Contractor has no similar obligation. Interim renewal contract: Assumes measurement for each agricultural turnout and M&I connection for facilities that are used for all water supplies.	Requires contractor to measure "all surface water delivered for M&I purposes [to be] measured at each municipal and industrial service connection."	Requires contractor to measure all surface water delivered for irrigation purposes at each agricultural turnout.
Rates and Method of Payment for Water	Existing long-term contract: Assumes rates fixed or determined as specified in contract; assumes semiannual payment of rates in advance of delivery; no provision for charges or tiered pricing. Interim renewal contract: Assumes payment of cost-of-service rates pursuant to rate-setting policy; payment of rates for first two months of scheduled deliveries with submission of delivery schedule each year; payment before end of month for next succeeding month=s deliveries thereafter; assumes payment for charges before end of month following delivery; tiered pricing as required by water conservation plan.	TO BE DETERMINED	TO BE DETERMINED

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	<u>Generally based on 2003 personal communications</u> (B. Holt, Reclamation, 2003) information; (pers. comm., B. Holt 2003)	Common to All Ten ⁴ <u>2003 Draft RAFT-Final</u> Long Term Contracts ²	Elements Unique to Contracts that Include Irrigation Water ³
	No similar provision.		Allows the contractor to request an exemption from tiered pricing components for CVP water delivered to produce a crop that will provide habitat values for waterfowl, if the habitat values are consistent with the purposes of the CVPIA.
	No similar provision.		Provides conditions and costs to the contractor for the commingling of CVP irrigation water and water acquired from another source.
Non-Interest Bearing Operation and Maintenance Deficits	Existing long-term contract: No similar provision. Interim renewal contract: Assumes either there is no non-interest-bearing deficit or that agreement is in place to retire any non-interest-bearing deficit.	Assumes the contractor has no non-interest bearing operation and maintenance deficits or, if there are deficits, that there is an agreement in place to retire the deficits.	

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	<u>Generally based on 2003 personal communications</u> (B. Holt, Reclamation, 2003) information; (pers. comm., B. Holt 2003)	Common to All Ten ¹ <u>2003 Draft RAFT-Final</u> Long Term Contracts ²	Elements Unique to Contracts that Include Irrigation Water ³
Sales, Transfers, or Exchanges of Water	Existing long-term contract: Requires contracting officer consent for CVP water use outside contractor service area. Interim renewal contract: Assumes sales, transfers or exchanges with others in accordance with Federal and state laws, guidelines and regulations, with consent of Contracting Officer. No intent to impede transfers between districts historically approved.	Assumes right to receive CVP water provided for in contract may be sold, transferred, or exchanged. Requires prior written consent of contracting officer except for transfers of a type historically carried out among contractors in the same geographical area. Requires environmental documentation. For historic transfers, requires advance notice but not prior written approval. Contracting officer will prepare environmental documentation for historic transfers, which shall be reviewed every 5 years and updated, as necessary.	
Application of Payments and Adjustments	Assumes refund of overpayment after satisfaction of any accrued indebtedness upon contractor request	Assumes any overpayments will be applied to current liabilities under the contract. Overpayments totaling more than \$1,000 will be refunded at contractor's request.	

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Contract Provisions	<u>Draft General Summary of Existing Contract Provisions</u> (Refer to Table A-2 for unique elements by Contractor)	General Summary of <u>Proposed</u> Preferred Action Contract Provisions ¹	
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Temporary Reductions--Return Flows	Existing long-term contract: Assumes United States reserves the right to return flows, seepage, and waste exiting contractor boundaries; assumes temporary reductions for operation, maintenance, and rehabilitation of facilities. Interim renewal contract: Substantially similar to long-term contracts; makes express existing obligation of Contracting Officer to make CVP water available, subject to authorized purposes and priorities of CVP and to obligations under existing contracts.	States that “contracting officer shall make all reasonable efforts to optimize water deliveries” from the CVP. Assumes contracting officer may temporarily discontinue or reduce water deliveries to investigate, inspect, maintain, repair, or replace CVP facilities. Reserves for the United States the right to all seepage and return flow water.	

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Contract Provisions	<u>Draft General Summary of Existing Contract Provisions</u> (Refer to Table A-2 for unique elements by Contractor)	General Summary of <u>Proposed</u> Preferred Action Contract Provisions ¹	
	<u>Generally based on 2003 personal communications</u> (B. Holt, Reclamation, 2003) information; (pers. comm., B. Holt 2003)	Common to All Ten ¹ <u>2003 Draft RAFT-Final</u> Long Term Contracts ²	Elements Unique to Contracts that Include Irrigation Water ³
Constraints on Availability of Project Water	Existing long-term contract: Assumes obligation of United States to utilize all reasonable means to guard against a condition of shortage; no liability of United States for shortages from specified causes; provides mechanism for apportionment of shortages among existing contractors. Interim renewal contract: Assumes obligation of Contracting Officer to utilize all reasonable means to guard against a condition of shortage; no liability to United States for shortages from specified causes, including actions of Contracting Officer to meet legal obligations, so long as such actions are not based upon arbitrary, capricious or unreasonable opinions or determinations; provides mechanism for apportionment of shortages among existing and future contractors, as described.	Absolves United States from liability for water shortage for causes beyond the control of the contracting officer or actions taken to meet legal obligations. Allocates CVP water "in accordance with the then-existing CVP M&I Water Shortage Policy." States that "contracting officer shall make all reasonable efforts to optimize water deliveries"; absolves U S from liability for water shortages for causes beyond the control of the contracting officer or actions taken to meet legal obligations; and allocates water "in accordance with then-existing CVP M&I Water Shortage Policy."	States that "Contractor shall not be deemed to have delivered irrigation water to excess lands or ineligible lands...if such lands are irrigated with groundwater" that percolates from applied CVP water.
Unavoidable Groundwater Percolation	Assumes that some of applied CVP water will percolate to groundwater		States that "Contractor shall not be deemed to have delivered irrigation water to excess lands or ineligible lands...if such lands are irrigated with groundwater" that percolates from applied CVP water.

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Contract Provisions	<u>Draft General Summary of Existing Contract Provisions</u> (Refer to Table A-2 for unique elements by Contractor)	General Summary of <u>Proposed</u> Preferred Action Contract Provisions ¹	
	<u>Generally based on 2003 personal communications</u> (B. Holt, Reclamation, 2003) information; (pers. comm., B. Holt 2003)	Common to All Ten ¹ <u>2003 Draft RAFT-Final Long Term Contracts</u> ²	Elements Unique to Contracts that Include Irrigation Water ³
Rules and Regulations	Assumes that CVP will operate in accordance with then-existing rules.	Assumes that CVP will operate in accordance with then-existing rules and regulations.	
Water and Air Pollution Control	Assumes that CVP will operate in accordance with then-existing rules.	Requires contractor to comply with state and Federal water and air pollution control laws and to obtain required permits.	
Quality of Water	Existing long-term contract: Assumes that water quality will be based on subjective standard; no warranty of quality; payment relief if water quality unsuitable. Interim renewal contract: Assumes operation and maintenance of CVP facilities to enable United States to deliver water in accordance with existing statutory quality standards; no warranty of quality.	States that CVP facilities shall be operated and maintained to enable the United States to deliver water in accordance with statutory water quality standards; does not provide warranty for water quality.	
Water Acquired by the Contractor Other Than from the United States	Existing long-term contract: Assumes that water may be commingled in district system as specified in contract. Interim renewal contract: Assumes that CVP and non-CVP water may be commingled in district system in accordance with existing rules.	Allows contractor to use CVP facilities for water not provided by the United States subject to environmental documentation and payment for such use.	

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Opinions and Determinations	Existing long-term contract: Opinions and determinations of parties to contract not to be arbitrary, capricious, or unreasonable; adjustment of payment obligations. Interim renewal contract: Opinions and determinations not to be arbitrary, capricious, or unreasonable; parties may seek relief, adjustment, monetary damages if they are.	Expresses right to relief for actions based on "arbitrary, capricious, or unreasonable opinions or determinations."	
Coordination and Cooperation	No similar provision.	States that contracting officer and contractor "shall communicate, coordinate, and cooperate with each other, and with other affected [CVP] contractors, in order to improve the operation and management of the [CVP]."	
	No similar provision.	Provides mechanism to develop communication process.	
	No similar provision.	Allows contracting officer to assist the contractor in developing integrated resource management plans.	
	No similar provision.	Provides for the Secretary of the Interior to coordinate with contractors and the State of California to seek improved water resource management.	

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	No similar provision.	Provides for the Secretary of the Interior and contractor to work together and with others in the region of the Redding Groundwater Basin to “facilitate the better integration within the region ...of all water supplies.”	
Charges for Delinquent Payments	Assumes that CVP will operate in accordance with existing rules.	Assumes that CVP will operate in accordance with existing rules.	
Equal Opportunity	Assumes that CVP will operate in accordance with existing rules.	Assumes that CVP will operate in accordance with existing rules.	
General Obligation--Benefits Conditioned upon Payment	Assumes that CVP will operate in accordance with existing rules.	Assumes that CVP will operate in accordance with existing rules.	
		Does not require contractor to obtain advance payment for water rates.	
Compliance with Civil Rights Laws and Regulations	Assumes that CVP will operate in accordance with existing rules.	Requires contractor to comply with existing laws and regulations.	
Privacy Act Compliance	Assumes that CVP will operate in accordance with existing rules.	Requires contractor to comply with existing laws and regulations.	

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GENERAL SUMMARY AND COMPARISON OF ~~SELECTED DRAFT~~ DRAFT 2003 CONTRACT PROVISIONS**

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	<u>Generally based on 2003 personal communications</u> (B. Holt, Reclamation, 2003) information; (pers. comm., B. Holt 2003)	Common to All Ten ¹ <u>2003 Draft RAFT-Final</u> Long Term Contracts ²	Elements Unique to Contracts that Include Irrigation Water ³
Contractor to Pay Certain Miscellaneous Costs	Existing long-term contract: No similar provision. Interim renewal contract: Assumes that CVP will operate in accordance with existing rules.	Assumes that CVP will operate in accordance with existing rules.	
Water Conservation	Existing long-term contract: No explicit similar requirement. Interim renewal contract: Assumes compliance with conservation programs established by Reclamation and the state.	Requires contractor to comply with water conservation programs established by Reclamation and the State of California.	
	No similar provision.	For contracts providing more than 2,000 acre-feet per year of M&I water, requires contractor to implement best management practices issued by the California Urban Water Conservation Council.	
	No similar provision.	Requires contractor to revise its water conservation plan at 5-year intervals to reflect then-current Federal criteria for evaluating water conservation plans.	
Existing or Acquired Water or Water Rights	Assumes that contract provisions are not applicable to non-CVP water, subject to provision on commingling.	Assumes that contract provisions are not applicable to non-CVP water.	

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Operation and Maintenance by Non-Federal Entity	Existing long-term contract: No similar provision. Interim renewal contract: Assumes that non-Federal entity will operate and maintain facilities and that certain payments to be made to that entity.	Assumes that non-Federal entity (if any) will operate and maintain CVP facilities and that certain payments will be made to that entity.	
Contingent on Appropriation or Allotment of Funds	Assumes that CVP will operate in accordance with existing rules.	Assumes that CVP will operate in accordance with existing rules.	
Books, Records, and Reports	Assumes that CVP will operate in accordance with existing rules.	Assumes that CVP will operate in accordance with existing rules; clarifies that only contract-related records will be requested, and requires copies to be sent to non-Federal operating entity (if any).	
Assignment Limited	Assumes that CVP will operate in accordance with existing rules.	Assumes that CVP will operate in accordance with existing rules.	
Severability	Existing long-term contract: No similar provision. Interim renewal contract: Assumes mechanism to address correction of provision found to be invalid upon legal challenge.	Assumes mechanism to address correction of provision found to be invalid upon legal challenge.	

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Resolution of Disputes	No similar provision.	Assumes a dispute resolution process.	
Officials Not to Benefit	Assumes that CVP will operate in accordance with existing rules.	Assumes that CVP will operate in accordance with existing rules.	
Changes in Contractor's Service Area	Assumes that CVP will operate in accordance with existing rules.	Assumes that CVP will operate in accordance with existing rules and describes administrative process.	
Notices	Assumes that CVP will operate in accordance with existing rules.	Assumes that CVP will operate in accordance with existing rules.	
Confirmation of Contract	Existing long-term contract: Assumes required validation of contract under state law. Interim renewal contract: No validation action required.	Assumes required validation of contract under state law.	

¹ Contract provisions were based on draft form contracts dated as follows: June 16, 2003 for BVWD, CCSD, City of Redding-Buckeye, City of Shasta Lake, CCCSD, and SCWA; June 26, 2003 for SCSD; and June 27, 2003 for KCSA and MGCSD.

~~The 10th contract, although informal, is a Memorandum of Agreement between two federal agencies and is not covered in this table.~~

² Ten contractors comprise the Shasta and Trinity River Division. The tenth "contract" is actually a Memorandum of Understanding between two federal agencies: USFS (at Centimudi Boat Ramp) and Reclamation, and is not included in this table.

³ BVWD and CCWD ¹ ~~Excludes the USFS Centimudi Memorandum of Understanding.~~

APPENDIX A: TABLE 2 ELEMENTS UNIQUE TO EXISTING AND INTERIM CONTRACTS: SHASTA AND TRINITY RIVER DIVISIONS ¹									
Unique Elements	M&I Water Only							M&I and Irrigation	
	Centerville Community Services District	City of Redding	City of Shasta Lake	Keswick County Services Area	Mountain Gate Community Services District	Shasta Community Services District	Shasta County Water Agency	Bella Vista Water District	Clear Creek Community Services District
Water available for delivery	2,900 acre-feet	6,140 acre-feet	2,750 acre-feet	500 acre-feet	350 acre-feet	1,000 acre-feet	2,100 acre-feet	24,000 acre-feet	15,300 acre-feet
Recent historic average made available	2,668 acre-feet	5,649 acre-feet	2,530 acre-feet	460 acre-feet	322 acre-feet	920 acre-feet	1,932 acre-feet	22,080 acre-feet	14,076 acre-feet
Point(s) of Diversion	Station 376+50 of the Muletown Conduit	Meter vault on 6-inch pipeline about 3/4 mile south of intersection of Lake Blvd. and Shasta Dam Blvd.; Spring Creek Power Conduit at Buckeye Water Treatment Plant, and existing point(s) of delivery from Sacramento River below Keswick Dam	16-inch water meter at water treatment facilities adjacent to Shasta Dam visitor area	Downstream end of metering equipment approximately at Station 176+62.0 of the Spring Creek Power Conduit	Shasta Reservoir	downstream end of metering equipment at Station 98+60 of Spring Creek Power Conduit	either at CVP facilities or location(s) agreed to by contracting officer and contractor	Sacramento River at Wintu Pumping Plant	downstream side of bifurcation valve at Whiskeytown Dam outlet works
Operating non-federal entity	Clear Creek CSD	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Privacy Act compliance	Not applicable	Required	Not applicable	Not applicable	Not applicable	Not applicable	Required [may change to Not applicable when contract is revised to remove ag water]	Required	Required

¹ Based on existing interim or unexpired contracts/data as of July 2003. The tenth “contract” is a Memorandum of Understanding between Reclamation and U.S. Forest Service (at the Centimudi Boat Ramp)

APPENDIX A: TABLE 2 ELEMENTS UNIQUE TO EXISTING AND INTERIM CONTRACTS: SHASTA AND TRINITY RIVER DIVISIONS ¹									
Unique Elements	M&I Water Only							M&I and Irrigation	
	Centerville Community Services District	City of Redding	City of Shasta Lake	Keswick County Services Area	Mountain Gate Community Services District	Shasta Community Services District	Shasta County Water Agency	Bella Vista Water District	Clear Creek Community Services District
Construction, installation, operations and maintenance (O&M), and ownership of facilities		Contractor shall operate and maintain 6-inch pipeline, which shall continued to be owned by U.S.; unless otherwise provided by Congress, U.S. will continue to own Toyon Pipeline.	Contractor shall construct, install, operate and maintain at its own expense facilities required to take, convey, and distribute water to users served by contractor.		Contractor shall construct, install, operate and maintain at its own expense facilities required to take, convey, and distribute water to users served by contractor.	Contractor shall construct, install, operate and maintain at its own expense facilities required to take, convey, and distribute water to users served by contractor.	Contractor shall construct, operate, and maintain at its own expense facilities required to take, convey, and distribute water to users served by contractor		
Other special provisions		Contractor will compensate U.S. for electricity losses resulting from water diverted at Spring Creek Power Conduit. U.S. is not obligated to furnish more than 40 acre-feet per year from Shasta Reservoir at the meter vault on the 6-inch pipeline. Contractor shall not use water furnished under the contract for power production unless it is incidental to water delivery to			U.S. shall not be responsible to maintain water levels in Shasta Reservoir to permit contractor to withdraw water from reservoir.	U.S. shall not be obligated to furnish water at point(s) of delivery in excess of 1,750 gallons per minute nor to furnish water at heads or pressures sufficient to deliver water into or through contractor's facilities.	Also receives water from Reclamation's Sacramento River Division. Water made available for direct diversion by contractor from Shasta, Keswick, and Whiskeytown have a valid claim. All surface water delivered to contractor must be measured by the contractor.	Costs associated with irrigation water distribution works constructed by U.S. separately covered by a repayment contract.	Contracting officer shall make reasonable efforts to deliver CVP water at full design head of bifurcation valve less reductions in capacity or head caused by contractor's devices or systems.

¹ Based on existing interim or unexpired contracts/data as of July 2003. The tenth "contract" is a Memorandum of Understanding between Reclamation and U.S. Forest Service (at the Centimudi Boat Ramp)

APPENDIX A: TABLE 2 ELEMENTS UNIQUE TO EXISTING AND INTERIM CONTRACTS: SHASTA AND TRINITY RIVER DIVISIONS ¹									
Unique Elements	M&I Water Only							M&I and Irrigation	
	Centerville Community Services District	City of Redding	City of Shasta Lake	Keswick County Services Area	Mountain Gate Community Services District	Shasta Community Services District	Shasta County Water Agency	Bella Vista Water District	Clear Creek Community Services District
		individual customers and Reclamation concurs with its use for power production. Contractor may use CVP water taken from 6-inch pipeline for approved water transfers and may pressurize deliveries through the pipeline. Requirement to measure water delivered includes backwash water used to clean filters at Buckeye Water Treatment Plant. Water furnished under this contract is considered separate from water furnished under Contract No. 14-06-200-2871A-R1.							

¹ Based on existing interim or unexpired contracts/data as of July 2003. The tenth “contract” is a Memorandum of Understanding between Reclamation and U.S. Forest Service (at the Centimudi Boat Ramp)